

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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JAMES EDWARD MOORE,

Petitioner,

-against-

ORDER  
05-CV-1386(JS)(ETB)

DAVID MILLER, Superintendent,  
Eastern New York Correctional  
Facility,

Respondent.

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Appearances:

For Petitioner: James Edward Moore  
84-A-1048  
Eastern New York Correctional Facility  
P.O. Box 338  
Napanoch, New York 12458-0338

For Respondent: No appearance

SEYBERT, District Judge:

Petitioner James Edward Moore ("Petitioner" or "Moore"), currently incarcerated at Eastern New York Correctional Facility, brings this petition challenging his custody pursuant to a judgment of conviction entered on February 8, 1984, before the New York State Supreme Court, Nassau County. As set forth below, the Court cannot consider the instant petition and transfers it to the United States Court of Appeals for the Second Circuit.

By order dated July 25, 1995, the Court denied Petitioner's prior petition under 28 U.S.C. § 2254 challenging the same conviction. Moore v. Kuhlmann, No. 93-CV-0369 (E.D.N.Y. July 25, 1995), aff'd, 101 F.3d 683 (2d Cir. 1996). The Antiterrorism

and Effective Death Penalty Act of 1996 "allocates jurisdiction to the courts of appeals, not the district courts, to authorize successive habeas motions or applications." Torres v. Senkowski, 316 F.3d 147, 151 (2d Cir. 2003); 28 U.S.C. § 2244(b)(3)(A). Therefore, jurisdiction of Petitioner's subsequent habeas corpus petitions is vested in the United States Court of Appeals for the Second Circuit. Moreover, Petitioner must move in the United States Court of Appeals for the Second Circuit for permission to pursue this successive petition for habeas corpus relief. 28 U.S.C. § 2244(b)(3)(A).

Accordingly, in the interest of justice, the Clerk of Court shall transfer this petition to the United States Court of Appeals for the Second Circuit pursuant to 28 U.S.C. § 1631. Torres, 316 F.3d at 151-52 (citing Liriano v. United States, 95 F.3d 119 (2d Cir. 1996)). The Clerk of the Court is directed to mark this case as CLOSED. If the United States Court of Appeals for the Second Circuit allows Petitioner to proceed with this petition, he shall move to reopen under this docket number.

SO ORDERED

/s/ JOANNA SEYBERT  
Joanna Seybert, U.S.D.J.

Dated: Central Islip New York  
April 19 , 2005